

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 13, 2013 at 1:30 p.m.

1. [13-26601](#)-E-13 CASSANDRA HUAPAYA MOTION FOR RELIEF FROM
TJP-1 Richard L. Jare AUTOMATIC STAY
7-12-13 [[26](#)]
TIDEWATER FINANCE COMPANY
VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 12, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to set the Motion for Relief from the Automatic Stay for a final hearing at 1:30 p.m. on August 27, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Tidewater Finance Company, ta Tidewater Motor Credit & Tidewater Credit Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Ford Escape, VIN ending in 03034. The moving party has provided the Declaration of Karen Reed to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Reed Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$919.32 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$20,112.77, as stated in the Reed Declaration, while the value of the asset is determined to be \$17,060.67, as stated in Schedules B and D filed by Debtor.

August 13, 2013 at 1:30 p.m.

Movant also argues that the Debtor does not currently have insurance on the subject vehicle.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee responds to the Motion, stating that the Debtor is not current under the proposed plan. Trustee has paid Movant \$216.00 to date.

DEBTOR'S OPPOSITION

Debtor opposes the motion, stating she needs the vehicle to commute to her place of employment. Debtor states she has always attempted to insure the vehicle, and after receiving this motion, upgraded the insurance and filed a verification in support.

Debtor states that because of the unexpected expense of the increased insurance coverage and paying the court fees in full, the debtor is about a week late on the payment to the Trustee.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

While Debtor has provided evidence of current insurance on the subject vehicle, the evidence before the court is that Debtor is still late on payments to the Trustee under the plan. The Debtor failing to make timely payments to the Trustee, who cannot make timely payments to the creditors, in addition to the lack of equity is sufficient grounds pursuant to 11 U.S.C. § 362(d) (2) for the court to grant relief from the automatic stay.

Though the Debtor provides a plausible explanation for the delinquency in payment - paying a lump sum insurance expense - that does not excuse the failure to properly maintain insurance or be able to make the promised plan payments (Order confirming plan entered on the Docket on August 5, 2013, Dckt. 51).

The court continues the hearing to 1:30 p.m. on August 27, 2013. By that time the Debtor can be current on the required plan payments, including the payment due on August 25, 2013. Creditor can file supplemental pleadings addressing whether it continues to assert that the insurance provided is not sufficient.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the hearing on the Motion for Relief From the Automatic Stay is continued to 1:30 p.m. on August 27, 2013. On or before August 20, 2013, the Debtor, Chapter 13 Trustee, and Tidewater Finance Company, t/a Tidewater Motor Credit & Tidewater Credit Services, shall file supplemental pleadings if any addressing (1) sufficiency of the insurance, and (2) evidence of any additional payments made by the Debtor to the Chapter 13 Trustee. It is the responsibility of the Debtor to have the August 25, 2013 payment timely delivered to the Chapter 13 Trustee and to present evidence at the August 27, 2013 hearing of such payment having been made to the Trustee (which may be in the form of the Chapter 13 Trustee acknowledging at the August 27, 2013 hearing timely receipt of the August 25, 2013 payment.

2. [12-34689-E-7](#) ALLEN HASSAN
RHS-1 Pro Se

MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY(S), FEE: \$7,312.50,
EXPENSES: \$33.82., MOTION FOR
COMPENSATION FOR DOUGLAS M.
WHATLEY, CHAPTER 7 TRUSTEE(S),
FEE: \$5,340.00, EXPENSES:
\$99.25
7-29-13 [[184](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on July 29, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Compensation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Compensation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

BACKGROUND

Douglas M. Whatley, Chapter 7 Trustee and The Law Office of Barry H. Spitzer seek compensation pursuant to the Court's Order to Show Cause. Dckt. 193.

This case was commenced on August 10, 2012 as a Chapter 11 and was converted to a Chapter 7 on November 29, 2012 at the request of the Office of the United States Trustee. Mr. Whatley was appointed Chapter 7 Trustee.

The Trustee retained the services of Mr. Spitzer was retained and whose employment was approved on February 2, 2013.

Counsel asserts that the Debtor filed incomplete schedules and has not cooperated with the Trustee in producing documents. The Debtor did not appear at the meeting of creditors. These actions forced the Trustee and his counsel

to request the court issue an Order Compelling the Debtor to appear for examination by the Trustee, produce documents and extend the time in which all parties in interest may object to discharge. The Debtor failed to appear or produce the requested documents.

The Trustee then filed a request for an Order to Show Cause regarding Debtor's failure to comply. Debtor still failed to comply.

Trustee and Counsel seek fees for services from January 16, 2013 through July 29, 2013.

Award of Sanctions

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others in a similar situation.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehtinen*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

With respect to the present request for attorneys' fees, Allen C. Hassan, an attorney and debtor appearing in pro se, has been afforded multiple opportunities to produce to the Chapter 7 Trustee the books and records of the bankruptcy estate, the financial records and information of the Debtor which he is obligated to provide to the Chapter 7 Trustee, and to appear at the statutorily mandated First Meeting of Creditors. Mr. Hassan was further afforded to comply with the express order of this court requiring him to

produce the books and records on July 9, 2013. The court further afforded Mr. Hassan the opportunity to seek relief from the order requiring the books and records to be produced on July 9, 2013. No relief was sought by Mr. Hassan. See July 30, 2013 Order Imposing Corrective Sanctions, Dckt. 193; July 25, 2013 Civil Minutes, Dckt. 190; June 25, 2013 Order Compelling Appearing and Production of Documents, Dckt. 178; June 25, 2013 Order to Show Cause, Dckt. 176; June 20, 2013 Civil Minutes, Dckt. 174; and April 26, 2013 Order Compelling production of records of the estate and documents, Dckt. 163; April 25, 2013 Civil Minutes, Dckt. 161.

Allen C. Hassan has failed to comply with the Bankruptcy Code, subpoena, and express orders of this court. Mr. Hassan has been provided with multiple opportunities to comply, and has been provided with express procedures for seeking relief from the orders to appear and produce documents. He has failed to comply or seek relief. Allen C. Hassan was active in this case, appearing at hearings, up to the point it was converted to one under Chapter 7. Since that time he has refused and failed to participate. The court concludes from his failure to appear and participate that he is willfully and intentionally doing so in an effort to subvert the federal judicial process. Further, he is willfully, knowingly, and intentionally withholding assets of the Chapter 7 estate (the books, records, and financial information) from the Chapter 7 Trustee, as well as willfully has cause the Chapter 7 Trustee and Counsel for the Chapter 7 Trustee to expend time and effort to obtain this basic information as to assets of the estate and the finances of the Debtor necessary for the Trustee fulfilling his duties and Allen C. Hassan, the Chapter 7 debtor, fulfilling his minimal obligations in this bankruptcy case he voluntarily commenced.

Though his willful non-compliance Allen C. Hassan has cause the Chapter 7 Trustee and Counsel for the Chapter 7 Trustee to expend this time and resources, for which the award of fees and expenses is warranted. It is necessary and appropriate to compensate the Trustee and Counsel for the time and expense of having to address Allen C. Hassan's continuing, willful failure to not comply with the orders of this court. This is a compensatory award of a civil penalty, which may have the corollary effect of Allen C. Hassan complying with court orders in the future as he realizes that (1) he will be obligated to pay for the time and resources which are expended to address his non-compliance and (2) he cannot stonewall the Chapter 7 Trustee in an apparent effort to hide assets from the Trustee. FN.1.

FN.1. As addressed in *Price v. Lehtinen (In re Lehtinen)* 564 F.3d at 1059 - 1060, the exercise of the inherent power of the federal court to sanction attorneys and parties for "bad faith" or "willful misconduct" is not only to deter the improper conduct and coerce compliance, but may be to compensate for the actual damages caused by the improper conduct (citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2002)).

Description of Services for Which Counsel Fees Are Requested

Reviewing court files: Counsel reviewed the court files.

Meetings with Trustee: Counsel met with Trustee regarding the facts of the case and advised him on compelling the debtor to produce documents.

Pleadings: Counsel prepared pleadings seeking orders from this court compelling the Debtor to produce documents and appear for his meeting of creditors and appearing at associated hearings.

Counsel's fees are for the time period from January 16, 2013 through July 29, 2013. Counsel does not provide the court with a Task Billing Analysis providing a breakdown by task area of the services for which recover is sought. However, the raw billing statements are provided as Exhibit A in support of the motion. From this raw data the court concludes that the following services and related fees relate to or flow from Allen C. Hassan's failure to comply with the subpoena, orders of the court and Bankruptcy Code obligations to produce the books and records which are property of the estate and the financial information for the Trustee.

Task Description	Time Expended - Hours	Time x \$325.00 per Hour
Communications With the Chapter 7 Trustee re Failure of Allen C. Hassan to Provide the Documents	2.2	\$715.00
Motions to Compel Production of Documents and Records	6.9	\$2,242.50
Correspondence to Allen C. Hassan Regarding Failure to Produce Documents and Records	1.3	\$422.50
Investigation of Other Bankruptcy Filings	.3	\$97.50
Order to Show Cause	7.3	\$2,372.50
Pleadings and Hearing on Fee Application (Court adding an additional 1.5 hours for hearing on Motion)	<u>4.0</u>	<u>\$1,300.00</u>
Total	22	\$7,150.00

Counsel also requests expenses of \$5.92 in postage costs and \$27.90 in photocopy costs. Counsel does not identify for the court the per page photo copy expense. Absent an explanation for an actual higher expense, the court does not allow more than \$0.10 a page for copy expenses. The court infers that the \$27.90 in copy expenses are computed at not more than \$0.10 a page given the modest amount of this expense.

Description of Services for Which Trustee Fees Are Requested

Trustee Duties: Counsel performed the normal and usual Trustee duties including: opening the case and entering it into the Trustee's case management software system; reviewing the petition, schedules and statements; reviewing mail; preparing for the 341(a) Meeting of Creditors; discussions with the Debtor and his associates regarding assets and maintaining the proper Trustee bond.

Communications: Counsel had discussions with E. Gee from the Office of the US Trustee; extensive meetings and communications with Counsel regarding compelling the Debtor to produce documents and appearance at the meeting of creditors and subsequent motions before the court; drove to business owned by Debtor.

Motion to Compel: Counsel reviewed and assisted in preparing pleadings seeking orders from this court compelling the Debtor to produce documents and appear for his meeting of creditors.

The Trustee's fees are requested for the period November 27, 2012, through July 26, 2013. The Trustee does not provide the court with a Task Billing Analysis providing a breakdown by task area of the services for which recover is sought. However, the raw billing statements are provided as Exhibit B in support of the motion. From this raw data the court concludes that the following services and related fees relate to or flow from Allen C. Hassan's failure to comply with the subpoena, orders of the court and Bankruptcy Code obligations to produce the books and records which are property of the estate and the financial information for the Trustee.

Task Description	Time Expended - Hours	Time x \$300.00 per Hour
Communications With the Counsel for Chapter 7 Trustee re Failure of Allen C. Hassan to Provide the Documents	.5	\$150.00
Motions to Compel Production of Documents and Records	2.1	\$630.00
Communications with to Allen C. Hassan Regarding Failure to Produce Documents and Records	.3	\$90.00
Order to Show Cause	.65	\$195.00
Pleadings and Hearing on Fee Application (Court adding an additional 1.5 hours for hearing on Motion)	<u>1.5</u>	<u>\$450.00</u>
Total	5.05	\$1,515.00

The Trustee has also requested travel expenses of \$74.80 (\$0.55 a mile for 136.0 miles) and \$16.45 photo copy expenses (47 copies at \$0.35 a page). The court considers the \$74.80 in travel expenses and \$4.70 in photocopy expenses (computed at \$0.10 a page).

Waiver of Failure to Provide Task Billing Analysis

In seeking the approval of fees, the court typically requires that applicant provide a task billing analysis in which the various activities, time charged, and fees by task area is provided. These can include Administrative Work (such as applications to employ, communicating with the Clerk's office for procedure, and the organizational activities of counsel); motions for relief from the stay; motions for sale, use or lease of property, for obtaining credit, or abandoning property; preference and avoiding adversary proceedings, other adversary proceedings; plans, disclosure statements, and confirmation; and the like. Within each of the task areas a brief description is provided and the time and fees relating to those items. For the present Motion, applicant appears to have merely lumped substantially all of the work into a "Case Overview and Description of Services Rendered" list.

Exhibits B and C filed in support of the Motion are Counsel's and the Trustee's raw time records, in which all of the activities are mixed together, leaving it for the court to mine the document to construct a task billing analysis. While the court typically declines the opportunity, the court will consider the evidence provided due to the amounts requested and the special circumstances in this case.

COUNSEL FEES ALLOWED

The court finds that the hourly rate of \$325 reasonable in this case and that Counsel effectively expended time in a reasonable manner addressing the issues relating to the failure to produce documents and records. The court allows \$7,150.00 in attorneys' fees and \$27.90 in costs and expenses as compensatory sanctions to be paid by Allen C. Hassan for the time and services caused by Allen C. Hassan's failure to produce the books and records which are property of the estate and the financial information as ordered by the court. The court disallows fees relating to Bayview Bank as it is not clear how these fees relate to the failure to comply with the order to produce the documents and records.

TRUSTEE FEES ALLOWED

The court finds that the hourly rate of \$300.00 for the Trustee is reasonable in this case and the Trustee effectively expended the time in a reasonable manner addressing the issues relating to the failure to produce documents and records. The court allows \$1,515.00 in Trustee's fees and \$79.50 in costs and expenses as compensatory sanctions to be paid by Allen C. Hassan for the time and services caused by Allen C. Hassan's failure to produce the books and records which are property of the estate and the financial information as ordered by the court. The court disallows fees relating to the conversion of this case and general case matters which pre-date the failure to produce the documents and records.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Counsel and Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Barry H. Spitzer, Counsel to the Chapter 7 Trustee, is awarded and Allen C. Hassan is ordered to pay to Barry H. Spitzer \$7,177.90 in compensatory sanctions.

IT IS ORDERED that Douglas M. Whatley, the Chapter 7 Trustee, is awarded and Allen C. Hassan is ordered to pay as to Douglas M. Whatley \$1,594.50 in compensatory sanctions.

IT IS FURTHER ORDERED that the obligation to pay the respective compensatory sanctions is immediately due and enforceable.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

3. [10-23577](#)-E-11 GLORIA FREEMAN
GMF-15 Pro Se

MOTION TO REMOVE FLEMMER AND
ASSOCIATES AS THE
CPA/ACCOUNTANT AND/OR MOTION TO
DISGORGE FLEMMER AND ASSOCIATES
FEES FOR THE ESTATE OF GLORIA
FREEMAN AND OTHER ENTITIES IN
THE EASTERN DISTRICT OF
CALIFORNIA, CHAPTER 11 CASE,
MOTION TO APPOINT JULIE HEATH
CPA
7-25-13 [[873](#)]

CONT. FROM 8-8-13

Final Ruling: Debtor Gloria Freeman having filed a Withdrawal of the Motion to Remove Flemmer and Associates as CPA, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 the Motion to Remove Flemmer and Associates as CPA was dismissed without prejudice, and the matter is removed from the calendar.